IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.29871 of 1998

Between:

K. Doraiswamy, S/o Perumal garu,

Aged about 55 years,

Near Swamy Theatre,

R/o Rajarajeshwarapuram, Guntur-6

Andhra Pradesh.

..... PETITIONER

AND

1. The Management of Sri Bajarang Jute

Mills Ltd., Guntur, represented by

East India Commercial Company Ltd.

2. The Labour Court, Guntur, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction under Article 226 of the Constitution of India, particularly one in the nature of Writ of Certiorari quashing the order of the Labour Court, Guntur passed on 24th August,1998 in Miscellaneous Petition No.56/1995 as illegal, unfair and unjust after calling for the records.

Counsel for the Petitioner: Mr. PRATTIPATI VENKATESWARLU
Counsel for Respondent No.1: Mr. VIKRAM VENKATESWARA RAO
Counsel for Respondent No.2: GP FOR LABOUR

The Court made the following :

ORDER:

This Writ Petition is filed questioning the Order dated 24-8-1998 passed by the Labour Court at Guntur in M.P.No.56 of 1995 under Section 33-C(2) of the Industrial Disputes Act,1947 (for short 'the Act') rejecting the claim of the petitioner-workman.

It is an unfortunate case that in spite of there being an Order passed by the Labour Court earlier, which attained finality in a Writ Petition filed by the Management before this Court, the petitioner was not permitted to join duty. In the meanwhile, the industry was declared sick and in view of the Order passed by the BIFR, it was taken over by another Management (1st respondent herein). Even when the new Management did not permit the petitioner to join duty, he filed a petition under Section 33-C(2) of the Act claiming wages. The said petition was taken up as M.P.No.56 of 1995 and ultimately, the same was dismissed on 24-8-1998.

The brief facts, which are not in dispute and require to be noticed, are that the petitioner was appointed as a Weaver in Sri Bajarang Jute Mills Limited, Guntur, in the year 1962. While so, the respondent-management passed an Order dated 4-7-1985 dismissing the petitioner from service of the Mill after making an inquiry into the charges levelled against him. However, since I.D.No.60 of 1985 was pending before the Labour Court at Guntur, the Management sought approval of the action taken by

them in dismissing the petitioner from service by way of filing M.P.No.59 of 1985 under Section 33(2)(b) of the Act. The said M.P.No.59 of 1985 was dismissed on 30-6-1986. However, aggrieved by the said order dated 30-6-1986, the management filed Writ Petition No.12984 of 1986, which was disposed of by this Court saying "*it is stated that the petitioner-company was closed six years back. In view of that, no orders are necessary. Writ Petition is disposed of*" by an Order dated 15-4-1994. However, at the time of admission of Writ Petition No.12984 of 1986 this Court granted interim suspension of the operation of the Order dated 30-6-1986 in M.P.No.59 of 1985. Thereafter, the petitioner got issued a notice to the management on 15-2-1995 requesting the management to permit him to join duty in view of the fact that the order of dismissal from service dated 4-7-1985 was not approved by the Labour Court in the order in M.P.No.59 of 1985, dated 30-6-1986 and further the Writ Petition was closed on 15-4-1994. There was no response from the management. Therefore, he filed M.P.No.56 of 1985 under Section 33-C(2) of the Act stating that at no point of time he was removed from service of the respondent-Bank in view of the fact that the approval sought by the management under Section 33(2)(b) of the Act was rejected and the same attained finality in Writ Petition No.12984 of 1986 before this Court. Further, in spite of the efforts made by him to get into the employment, he was not permitted to join duty. Thus, he claimed wages as under:

1. Wages due from 4-7-1985 to 31-7-1995 : Rs.1,54,000-00

Wages due from 1-8-1995 to 30-9-2001

i.e. till the date of retirement.

Wages @ Rs.136/- per day. Hence,

Wages for 1 month i.e. 26 days only

Per month.

Rs.136x26 days = Rs.3,536/-

Total period of wages = 74 months

(1.8.95 to 30.9.2001)

Total claim = Rs.3,536 x 74 months : 2,61,664-00

2. Gratuity for 38 years. 15 days per 1 year.

Total period = 15x28 = 570 days

Total Gratuity claim Rs.136x570 : 77,520-00

3. Bonus claim due w.e.f. 4-7-85 to 30-9-2001

Rs.1,54,000 d+2,61,664=4,15,664x8.33%: 34,625-00

4. P.F. contribution from 4-7-85 to 30-9-01

Total period of PF contribution is 16

Years (192 months).

PF contribution per 1 month is Rs.353/-

Rs.353 x 192 = 67,776-00 : 67,776-00

5. The petitioner has to be paid pension

with effect from 1-10-2001 as per

rules in vogue

6. National Holidays claim:

National Holidays per 1 year is 9 days

Total No.of National Holidays = 9x16 years :

(From 4-7-85 to 30-9-01) = 144 days

Claim for 144 days=Rs.136x144) : 19,584-00

_____ 6,15,169-00

_____

The respondent-management filed a detailed counter affidavit before the Labour Court in M.P.No.56 of 1995 stating that the petitioner was not on the rolls of the company as on the date of taking of the company by the present management. As such, there was no employer and employee relationship between the petitioner and the respondent-management. Further, they came to know about the employment of the petitioner with the respondent-company only after receiving notice in the petition under Section 33-C(2) of the Act before the Labour Court. It was further asserted that in view of the terms of the Memorandum of Understanding insofar as service conditions of the workman were concerned, there is no obligation on the part

of the present management either to treat him as an employee of the company or there is any liability cast on the respondent to pay such amounts. The terms and conditions of the Memorandum of Understanding relating to the workman are as under:

i. The new management hereby agrees that they will employ all permanent and Badli workmen on the rolls of the company as on date of their reopening the mills except those who have attained the age of retirement or not serviceable due to illness.

ii. The workman and unions hereby undertake to relinquish their claims for recovering wages, difference in wage rates, bonus and any other amounts due or assumed due to them in any manner including amounts receivable by them as a consequence of any court costs against the company during and or relating to their employment under the old management and undertake to make no claims whatsoever at any time for part or whole of any such amounts claimed due from the company, against the new management.

iii. In consideration of this, the new management undertakes to relinquish its right to recover any amounts repayable by workers against payments made by the Company under the old management by way of recoverable advances or in any other manner.

Further, while passing the order in Case No.42 of 1989 BIFR directed that the Memorandum of Understanding between EICC and the workmen and the Unions in Sri Bajarang Jute Mills Ltd shall be binding on all the parties concerned and the scheme approved shall come into force with effect from 16-6-1994. Thereafter, all the registered unions functioning in Sri Bajarang Jute Mills Limited, Guntur and the new management have reached an understanding and signed a settlement under Section 12(3) of the Act before the Deputy Commissioner of Labour, Guntur touching the matters on wage fixation, House Rent Allowance, national festival holidays etc. Clause (10) of the said settlement speaks '*the parties agreed that this agreement shall be valid for a period of five years till 31-12-1999'*. The parties further agreed to be bound by the terms of memorandum of understanding dated 29-1-1994 and the scheme of rehabilitation approved by the BIFR. The new management M/s. East India Commercial Company Limited has commenced its operations in Sri Bajarang Jute Mills Ltd., Guntur with effect from 21-12-1994 in a phased manner. The liability of the present management of EICC vis-à-vis Sri Bajarang Jute Mills Limited under the scheme of BIFR is to employ all permanent and Badli workmen on the rolls of the company as on the date of their reopening the mills. The name of the petitioner was not there on the rolls of the company as on the date of the reopening and hence,

he is not entitled either for employment under the respondent-present management or to any money from them. The petitioner was neither employed nor dismissed by the respondent-present promoter of the said sick company and there was no contractual obligation between the old management and the present management of the Mills to employ the petitioner or to pay anything to him. It is not the routine transfer of management with assets or with assets and liabilities either on sale or of purchase from one management to the other. The respondent-company was a sick company, the management of which has been entrusted to the new company under the orders of the BIFR. Therefore, the terms and conditions enumerated in the sanctioned scheme binds the parties. The present management is not a party to what all happened during the period of old management. The present management is also not a party to the proceedings in I.D.No.60 of 1985 or in M.P.No.59 of 1985 before the Labour Court, Guntur or in Writ Petition No.12984 of 1986 before this Court. Further, on verification by the respondent-management, it was found that the very application made under Section 33(2)(b) of the Act in M.P.No.59 of 1985 seeking approval of the action taken by them in dismissing the petitioner was not maintainable for the reason that the previous management was under the impression since I.D.No.60 of 1985 was pending before the Labour Court, it should seek approval of dismissal of a workman. Under that mistaken impression M.P.No.59 of 1985 was filed seeking approval of their action. However, the Labour Court without there being any jurisdiction entertained the same and rejected the approval. Further, aggrieved by the same, the previous management had filed Writ Petition No.12984 of 1986 and this Court by an Order dated 15-4-1994 disposed of the Writ Petition with an observation 'the company was closed. No orders are necessary'. In the Writ Petition, neither the order of the Labour Court was affirmed nor it was negatived.

Before the Labour Court, in support of his case, the petitioner examined himself as P.W.1 and marked the documents Exs.P1 to P7 and on behalf of the respondent-management R.W.1 was examined and documents Exs.R1 to R21 were marked. After a detailed consideration of the entire evidence on record and the submissions made by the learned counsel for the parties, the Labour Court came to the conclusion that if the petitioner raised industrial dispute against the dismissal order passed by the old management and obtained award for reinstatement against the

dismissal order and if the management did not reinstate him, he can question and proceed under Section 33-C(2) of the Act only in the absence of Exs.R1 to R3. The terms and conditions in Exs.R1 to R3 are binding on the petitioner, as he is an office bearer of the Chaitanya Bajarang Jute Mills Workers Union as per Ex.R2. Admittedly, there is no award passed for reinstatement and, therefore, there is no justification in filing the petition under Section 33-C(2) of the Act. Aggrieved by the same, the present Writ Petition is filed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the Order passed by the Labour Court and also the other material made available on record.

May be, it is true that when there was no necessity of obtaining any approval from the Labour Court as to dismissal of the petitioner while I.D.No.60 of 1985 was pending, the old management filed such a petition under Section 33(2)(b) of the Act in M.P.No.59 of 1985. When the approval was rejected by the Labour Court, the previous management had filed Writ Petition No.12984 of 1986. As the ill luck would have, during the pendency of the said Writ Petition, the industry has become sick and the matter was referred to the BIFR. By the Orders of the BIFR in Case No.42 of 1989, the present management i.e. East India Commercial Company Limited had taken over the management of the sick company and started functioning. Writ Petition No.12984 of 1986 was also disposed of on 15-6-1994 only by observing that since the company was closed six years back, no orders are necessary in the Writ Petition.

It is the case of the respondent-new management that as per the terms insofar as the workers of old industry was concerned, only those who are on the rolls were permitted to join duty and so far as others like the petitioner are concerned, there is no relationship of master and servant. Therefore, for the mistakes committed by the earlier management, the present management is not responsible. The order in M.P.No.59 of 1985, dated 30-6-1986 itself is *non est* in the eye of law. Further, no detailed order was passed while disposing of Writ Petition No.12984 of 1986 on 15-6-1994. Therefore, it must be construed that no opinion was expressed on merits. Looking from any angle, the petition filed under Section 33-C(2) of the Act in M.P.No.56 of 1995 is not maintainable against the present management.

In this backdrop, the question that arises for consideration is whether an

approval sought under Section 33(2)(b) of the Act, which was rejected by the Labour Court by an order in earlier M.P.No.59 of 1985, dated 30-6-1986 and the resultant Writ Petition No.12984 of 1986, which was disposed of on 15-6-1994, has no binding effect on the present management ?

It is not in dispute that the petitioner-workman was employed by the respondent-Jute Mills and he was in service till his services were sought to be terminated in view of disciplinary proceedings initiated against him. It is also not in dispute that M.P.No.59 of 1985 was filed by the previous management seeking approval of the dismissal order passed against the petitioner and after an elaborate consideration, the approval was not granted by an order dated 30-6-1986. May be, the very application under Section 33(2)(b) of the Act was not necessitated as per law. Apart from this, the Writ Petition filed before this Court was disposed of on 15-6-1994. Thereafter, the petitioner got issued a legal notice on 15-2-1995 requesting the management to take back him into service. It may be necessary to notice here that while admitting Writ Petition No.12984 of 1986, this Court by an interim order in W.P.M.P. No.16909 of 1986 dated 22-9-1986 suspended the operation of the Order dated 30-6-1986 passed in M.P.No.59 of 1985, pending disposal of the Writ Petition. Having obtained an interim order, the previous management either ought to have reinstated the petitioner into service or implemented the orders of dismissal from service, subject to result of the Writ Petition. No such course of action was adopted. Therefore, rightly, the petitioner, after the disposal of Writ Petition No.12984 of 1986 got issued a legal notice dated 15-2-1995 seeking to permit him to join duty. In the meanwhile, the present management had taken over the industry pursuant to an Order passed by the BIFR. In view of these peculiar circumstances, it must be deemed that the petitioner was on the rolls of the industry even as on the date of taking over by the present management on 21-12-1994. If really the present management is interested in pursuing the Writ Petition, nothing prevented it from filing either a review petition in the said Writ Petition No.12984 of 1986 or a fresh Writ Petition, since the order passed in W.P.No.12984 of 1986 was not on merits and the principles of *res judicata* would not have come in the way of the present management. No such steps were taken even after filing of M.P.No.56 of 1995 under Section 33-C(2) of the Act claiming the wages. Whereas, a counter affidavit has been filed before the Labour Court in M.P.No.56 of 1995 stating that since there was no necessity for the previous management in filing the petition under Section 33(2)(b) of the Act in M.P.No.59 of 1985, the rejection order passed by the Labour Court

on 30-6-1986 was *non est* in the eye of law and Writ Petition No.12984 of 1986 filed before this Court, whether it was dismissed or allowed has no consequence; therefore, it must be deemed that the petitioner's services were already terminated and the question of treating him in continuous service and his entitlement for reinstatement after disposal of the said Writ Petition would not arise. I am afraid, I cannot accede to such proposition set up by the learned counsel for the respondent-management as accepted by the Labour Court. It was not open for the Labour Court to find fault with the order passed by the Labour Court in M.P.No.59 of 1985 without there being any proper proceedings in this regard. The Labour Court could not have said that the order dated 30-6-1986 in M.P.No.59 of 1985 was without jurisdiction. This amounts to reviewing its own order in a collateral proceeding. Further, the finding of the Labour Court that in view of Exs.R1 to R3 also the claim of the petitioner under Section 33-C(2) of the Act has no base is without any substance. Leaving the technicalities, the workman must be deemed to be on the rolls of the previous management and he was on the rolls of the present management as on the date of taking over in view of the pendency of Writ Petition No.12984 of 1986. The ignorance pleaded by the Management that it came to know about the litigation between the petitioner and the old management only when the claim petition under Section 33-C(2) of the Act was filed before the Labour Court and they have dug up the records and got it only from the BIFR, is only a ruse. Once the respondent is taking over the management of a sick industry under an Award passed by the BIFR, it is supposed to know all the pending litigation before the Courts relating to the industry, which is taken over by them. In fact, the Writ Petition was disposed of on 15-6-1994 in the presence of learned counsel for both the parties. Even a wrong approach made by the previous management in seeking approval under Section 33(2)(b) of the Act and its rejection by the Labour Court and further filing Writ Petition before this Court itself does not make the order *non est* in the eye of law. For every illegal order, there is a way of getting it corrected. In this case, such course of action is not adopted by the management and the Labour Court in M.P.No.56 of 1995 has simply carried away by the submissions made by the present management that there was no necessity of seeking approval under Section 33(2)(b) of the Act in the circumstances of the case and even otherwise in view of Exs.R1 to R3, the petitioner cannot be treated to be an employee of the present management and the very petition under Section 33-C(2) of the Act is not maintainable. It cannot be said that the Labour Court while dealing with the petition under Section 33(2)(b) of the Act

had no jurisdiction at all. May be, it was supposed to deal with as to whether the dispute pending was concerning the workman while disposing of the petition under Section 33(2)(b) of the Act. May be, the Labour court has not addressed itself to this aspect. But those proceedings have attained finality and the petitioner workman cannot be blamed for this. In fact, the management has to blame itself. Simply the aspect whether the main dispute pending before it was relevant to the workman or not was considered, but that itself does not mean that the order passed by the Labour Court is *non est* in the eye of law.

The order passed by a court of competent jurisdiction cannot be disobeyed or ignored by treating it as void or nullity until it has been set aside in a proper proceeding (see **ISSACS v. ROBERTSON** 1984(3)All.E.R. 140 PC). The difficulty arises in applying the principle of jurisdiction, as there is no clearcut demarcation between jurisdictional and non-jurisdictional questions of fact or law. The Legislature can create a tribunal having power to decide finally even jurisdictional facts and such a tribunal's determination is not liable to be questioned on the ground that it has wrongly decided the jurisdictional facts. Only in a case where the court usurps the jurisdiction, which was not vested in it, probably in those cases it can be said that when there is inherent lack of jurisdiction, no amount of consent can confer jurisdiction. This is not one such case. Therefore, unless and until the order passed in M.P.No.59 of 1985 is reversed in an appropriate legal proceeding, it cannot be said that the same is void and *non est* in the eye of law. Further, if it is to be treated as *non est* in the eye of law, it amounts to reviewing the Award passed by the earlier Court in the present proceedings, which is not permissible, since the Industrial Disputes Act or the Rules made thereunder does not permit reviewing of its own Order, except for correction of clerical errors. I am of the opinion that the Labour Court grossly erred in coming to such a conclusion that the order passed in M.P.No.59 of 1985 was without jurisdiction.

The Labour Court missed the link. Firstly, it is the management, which had filed the petition under Section 33(2)(b) of the Act and having invited an order from the Labour Court approached this Court by way of Writ Petition No.12984 of 1986 and obtained stay of the Order passed in M.P.No.59 of 1985, dated 30-6-1986. The petitioner was not communicated with any information after obtaining stay orders by the Management. Therefore, as noticed above, it was for the Management to

reinstate the petitioner into service or implement the order of dismissal, subject to result of the Writ Petition. No such action was taken and the workman cannot be blamed for this. Even in the present proceedings, the Labour Court has not decided as to whether the order passed in M.P.No.59 of 1985 is *non est* in the eye of law and the Executing Court can go into that aspect treating that the order obtained by the management in M.P.No.59 of 1985, which was filed under Section 33(2)(b) of the Act, was an illegal and void order and, therefore, it is *non est* in the eye of law or not. Secondly, Exs.R1 to R3 also do not throw any light as to not treating the petitioner as on the rolls of the present management as on the date of taking over. There is a legal fiction here to be resolved in the absence of the clear finding of the Labour Court as to the binding nature of the order passed in M.P.No.59 of 1985, dated 30-6-1986.

In view of the peculiar facts and circumstances of the case, the decisions relied upon by the learned counsel for the respondent-management have no relevance to the facts of this case. In the cases relied upon by the learned counsel, the proceedings arose directly questioning the orders passed by the Labour Court under Section 33(2)(b) of the Act, whereas in the case on hand, the decision rendered in the petition under Section 33(2)(b) of the Act in M.P.No.59 of 1985 has not come up for consideration directly. In fact, it attained finality on the disposal of Writ Petition No.12984 of 1986.

May be, the very petition filed by the Management seeking approval under Section 33(2)(b) of the Act in M.P.No.59 of 1985 was not necessitated in the instant case; so also, I.D.No.60 of 1985 purported to have been pending before the Labour Court has nothing to do with the service conditions of the petitioner. However, the Management has committed an error in inviting such a judgment and also approaching this Court by way of W.P.No.12984 of 1986. It is curious to note that entire pleadings in Writ Petition No.12984 of 1986 and the grounds raised therein do not indicate that it was the stand of the Management that the Labour Court has not addressed itself to decide the issue whether the workman is concerned in the pending dispute i.e. I.D.No.60 of 1985 or not. The whole Writ Petition No.12984 of 1986 was questioning on the merits of the findings of the Labour Court while dismissing the petition filed by the management under Section 33(2)(b) of the Act. Therefore, it cannot be said that the petitioner is not entitled for wages as claimed by him. The workman cannot be thrown out, on the ground that the management filed

an application out of innocence and the Labour Court has assumed jurisdiction on its own and had not decided the matter properly. This was available to the management even after the disposal of Writ Petition No.12984 of 1986 by filing either a review petition in the very same Writ Petition or otherwise. The Management has not taken such steps. It may not be out of place to notice that the dismissal order dated 4-7-1985 passed by the management against the petitioner was not for any act of dishonesty or misappropriation; it was only for the purported insubordination i.e. instead of working on two looms, he worked only on one loom. For this, he was dismissed from service. In fact, the Labour Court while dealing with the merits of the application under Section 33(2)(b) of the Act has categorically held that the circumstances do not warrant dismissal of the petitioner from service.

In view of the above, the petitioner is entitled for wages from the date of dismissal from service i.e. 4-7-1985 under Section 33-C(2) of the Act. The respondent-management cannot absolve of this responsibility simply because it has taken over the industry under an Award passed by BIFR. In fact, in the legal fiction, it must be deemed that the petitioner was on the rolls of even the present management as on the date of taking over i.e., 21-12-1994.

For all the above reasons, the Writ Petition is allowed directing the respondent-management to pay the petitioner the wages from the date of dismissal i.e. 4-7-1985 till the date of attaining the age of superannuation as claimed by him in M.P.No.56 of 1995, within a period of three months from today. No order as to costs.

27-7-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Wednesday, Twenty Seventh day of July Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Management of East India Commercial Company Ltd.,

representing Sri Bajarang Jute Mills Ltd., Guntur,

2. The Presiding Officer, Labour Court, Guntur, A.P.

3. 2 CCs to Government Pleader for Labour, High Court Buildings, Hyderabad (OUT)

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